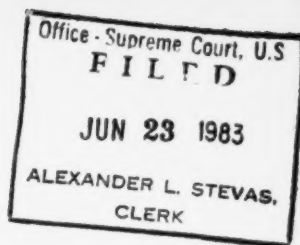


82-2099



NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

October Term 1982

ROBERT L. GIULIANI,

APPELLANT,

V.

WALTER G. CHUCK,

APPELLEE.

Appellant for Appeal - Civil Case

On Appeal from the Intermediate
Court of Appeals of Hawaii

JURISDICTIONAL STATEMENT

ROBERT L. GIULIANI
Attorney in Person

P.O. Box 30862
Honolulu, Hawaii
96820
Tel 808 833 4335

82

NO. 2099

IN THE SUPREME COURT OF THE
UNITED STATES

October Term 1982

ROBERT L. GIULIANI,

Appellant,

v.

WALTER G. CHUCK,

Appellee.

Appellant for Appeal - Civil Case

On Appeal from the Intermediate
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JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED FOR REVIEW

- A. WHETHER THE COURT'S RULES WERE UNCONSTITUTIONALLY APPLIED TO EVADE OR DEFEAT FEDERAL CONSTITUTIONAL RIGHTS AND STATUTE.
- B. WHETHER THE COURT'S JUDGMENTS ARE VALID TO EXTEND, DE-FACTO, THE LAWYER'S "LAWFUL PRIVILEGE" WHEN REPRESENTING A CLIENT TO DEPRIVE THIRD OR ADVERSE PERSONS OF THEIR LEGAL RIGHTS.

LIST OF PARTIES AFFECTED

INGE E. GIULIANI was a party Plaintiff to the proceedings in the Court whose judgment is sought to be reviewed. She submitted an affidavit to the lower court to withdraw from this case. It is the Appellant's belief that she has no interest in this appeal. Except for the caption, there are no other parties affected by this case.

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NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

October Term 1982

ROBERT L. GIULIANI,

Appellant,

v.

WALTER G. CHUCK,

Appellee.

On Appeal from the Intermediate
Court of Appeals of Hawaii

To the Honorable Chief Justice and Associate
Justices of the Supreme Court of the United
States:

Your Appellant, ROBERT L. GIULIANI,
respectfully prays that an appeal be
granted to review the final judgment of
the Intermediate Court of Appeals of
Hawaii in the above entitled case.

REFERENCE TO OPINIONS BELOW

The Opinion of the first of two appeals to

the Hawaii Intermediate Appellate Court in this case is found in 1 Hawaii Crt App 379, 620 P.2d 733. The first summary judgment leading to that appeal is in App. C. The second summary judgment in this case is in A.B. The Memorandum Opinion of the Intermediate Appellate Court of the appeal from the second summary judgment is in A.A. The copy of the Order for jury trial is in A.F. The final judgment being appealed from to this Honorable Court is copied into A.G.

JURISDICTION

The nature of the proceedings involve the extent to which a lawyer's "lawful immunity" or "lawful privilege" when representing a client, if it exists, can be applied to protect the lawyer from liability to third or adverse persons when the lawyer causes these persons injury with his intentional acts.

The Defendant CHUCK, acting as a lawyer, materially changed the Appellants' payment terms in an executed real estate contract without the party Appellants' knowledge after

Appellants paid deposit money to the seller. When Appellants refused to execute the legal papers containing CHUCK's varied terms and, instead, acted to legally rescind the contract pursuant to the contract's terms, CHUCK interfered and prevented the return of the Appellants' money.

The date of the entry of the final judgment was Apr 19, 1983 at 1014 AM. This was from a Memorandum Opinion dismissing the Appellant's appeal for want of jurisdiction. If this Honorable Court's determination is that the judgment cannot be considered, then in the alternative, the summary judgment of Apr 24, 1981 at 9:59 AM (A.B) is sought to be reviewed as rendered by the highest court in which a decision could be had. WESTERN UNION TEL CO v HUGHES. The Order Denying Rehearing of the summary judgment was entered July 15, 1981 (A.E). The Notice of Appeal respecting the Order Denying Rehearing was entered July 28, 1981 (A.H). The Appellate Court's Order Denying Reconsideration of its

Memorandum Opinion was entered Oct 27, 1982 (A.D). The Application for Writ of Certiorari by the Hawaii Supreme Court was entered Jan 5, 1983 and denied Jan 14, 1983(A.I).

The jurisdiction of this Honorable Court is sought pursuant to 28 USC Sec 1257(1), (3) or, alternatively, 28 USC Sec 2103.

The cases believed to sustain jurisdiction are: NEW YORK ex rel BRYANT v ZIMMERMAN; MISHKIN v NEW YORK; INTERNATIONAL HARVESTER v STATE OF MISSOURI.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES.

A. United States Constitution:

Amend VII

Amend XIV

B. United States Statutes

28 USC Sec 1257(1), (3)

28 USC Sec 2103

42 USC Sec 1983

C. Hawaii Constitution

Art I-Sec 4. DUE PROCESS AND EQUAL PROTECTION.

Art I-Sec 6. RIGHTS OF CITIZENS.

Art I-Sec 10. TRIAL BY JURY, CIVIL CASES.

Art I-Sec 19. LIMITATIONS ON SPECIAL PRIVILEGES.

Art I-Sec 6. RULES.

D. Hawaii Rules of Civil Procedure

Rule 16. Pre-trial Procedure; Formulating Case.

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RULE 61. Harmless Error
RULE 73. Appeal to Supreme Court and
Intermediate Court of Appeals

E. HAWAII REVISED STATUTES

HRS Sec 635-13 Jury, when of right.

HRS Sec 635-15 Functions of Court and
Jury.

STATEMENT OF THE CASE

Plaintiffs, as buyers, and HENRY DANG, as seller, executed a real estate contract for the purchase and sale of DANG's property. Plaintiffs paid DANG \$1,000.00 deposit pursuant to the contract's terms. Defendant CHUCK, as lawyer, drafted all the legal papers called for in the contract. CHUCK's promissory note materially varied the contract payment terms. It took away all the plaintiffs' leverage in the contract and without this leverage, the Plaintiffs total benefit in the contract was destroyed. As a result, Plaintiffs refused to execute any of CHUCK's papers. Material damage, without fault of the buyers (Plaintiffs), was sustained by the improvements on the property

and the Plaintiffs, thereupon, elected to rescind the contract pursuant to the terms of the contract. The normal contract closing did not occur. After the intended closing date, CHUCK wrote a letter to the Plaintiffs accusing them of contract breach and informing them that he was advising DANG to keep their deposit money. Plaintiffs earnestly tried to have their money returned but CHUCK interfered and prevented the return. It was imperative to the Appellants to avoid lengthy litigation. Nevertheless, CHUCK's acts forced the Plaintiffs to sue DANG for the return of their money. CHUCK's law firm defended DANG. Plaintiffs, pro se, prevailed in that hearing and a subsequent rehearing. CHUCK, through his law firm, appealed to the Hawaii Supreme Court where the Plaintiffs again prevailed some 2 1/2 years later.

As a result of CHUCK's cumulative acts, Plaintiffs sued CHUCK in the present case being appealed from here. The complaint was

entered Nov 18, 1975 in the First Circuit Court of Hawaii. The first of two depositions of Plaintiff ROBERT GIULIANI was entered Sept 7, 1976. CHUCK was granted summary judgment. During the summary hearing, CHUCK's counsel stated:

"Defendant admits everything in the complaint. There was no cause of action."

The Court denied Rehearing and the Order entered Mar 11, 1977. Plaintiff GIULIANI's Notice of Appeal to the Hawaii Supreme Court was entered Jan 11, 1977.

In a letter addressed to all judges of the Hawaii Appellate Court and entered on Sept 17, 1980 (Hi S.C. 6497), the Appellant specially set up or claimed his right and privilege under the Federal Constitution and Federal Statute. The pertinent part:

"This seems particularly evident in the face of a presumption of Appellants' rights in the contract; the cited provisions in the U.S. and Hawaii Constitutions; cited Hawaii statutes; U.S. statutes (42 USC 1983); all repeating and reinforcing the belief of the importance that the law gives to the protection of an individual's rights from just

such illusions of the lawyer's power and immunity professed by the Appellee and Lower Court in this case." (Emphasis added)

The validity of 42 USC Sec 1983 was also drawn in question in the above passage.

The Hawaii Court of Appeals heard the appeal and rendered its Opinion Dec 30, 1980. 1 Haw Ct.App 379,620 P.2d 733. That Opinion remanded the case to the lower court for further proceedings because of insufficiency of facts.

The lower summary court's Order Granting Demand for Jury Trial was entered Feb 25, 1981. The summary court ordered Appellant ROBERT GIULIANI to give a second impromptu deposition, taken Feb 9, 1981, of the events that occurred some seven years earlier. The interrogatories were substantially the same as those in the earlier deposition and nothing was discovered. The Appellant made the entire deposition worthless by disclaiming and qualifying it because of his belief that he could not accurately give the impromptu

tu answers called for after seven years since the events in question occurred. However, the newest defense counsel was to use excerpts from this deposition out of context to gain a summary decision.

A pretrial conference was held for the intended jury trial. The defense lawyer, in his pretrial statement, entered Mar 2, 1981, included "(Stipulation Requested)" for at least four facts that were at issue and further stated, "All other facts are disputed." The pro se Appellant never did agree to any of these stipulations of fact. They were, and remain, issues of fact which are entitled to a jury's determination; HRS Sec 635-15 (A.L). Notwithstanding this, the judge in the conference refused to let the case go to a jury and, instead, at the mere suggestion of this newest defense lawyer, reverted it back to a summary court where it had been heard and argued for about six years. The State cannot deprive Appellant of a Federal

right (Amend VII, A.L) by omitting questions of fact. BROOKLYN BANK v O'NEIL.

No record was made of the conference, notwithstanding the judge's duty to do so.

HRCP Rule 16 (A.K).

Back in the summary court, the Appellant and Appellee both entered several pertinent factual documents that were materially identical. These factual documents overwhelmingly favored the Appellants. They offered sufficient evidence to reach the correct decision 1 Haw Ct App 379,620 P.2d 733. Summary judgment was given to the Defendant lawyer and the Appellants were denied their right to jury trial pursuant to Amend VII, U.S. Const. (A.L) and Haw. Const. Art I-Sec 10 (A.L). These events, together with a flurry of needless defense counsel motions and a procession of replacement lawyers, all occurring within approximately one month was enough to temporarily confuse the pro se Appellant into counting the time for appeal

from the Rehearing date July 15, 1981 (See Jurisdiction above) resulting in a claim of untimely appeal. If the appeal was untimely, it was made after these disruptive, unconstitutional and confusing tactics occurred. These tactics and the resultant claim of untimely appeal did not change the facts and circumstances that cause this suit and, therefore, were not grounds for a responsible judicial decision. The pro se Appellant had been proceeding alone, without legal counsel, for six years with no record of violating the courts' frequently confusing rules; instead, meticulously following them. The Hawaii Appellate Court was made aware of these events but dismissed the appeal for lack of jurisdiction pursuant to the Courts' rules (A.M). The same courts' rules, HRCF RULE 61, prohibits setting aside or vacating the summary judgment "unless refusal to take such action appears to the court inconsistent with substantial justice." (A.N). Under the cir-

cumstances, it should have appeared to the court that the summary judgment was patently inconsistent with substantial justice. The very lengthy procedural rule, HRCF RULE 60, is here quoted in part:

"-- This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. --"

The Appellant made application to the Appellate Court for rehearing and quoted U.S. Const. Amend VII, verbatim therein, thereby specially setting up or claiming his Federal right again. The Rehearing was denied (A.D). The Appellant's Application for Writ of Certiorari to the Hawaii Supreme Court was denied (A.I). Final Judgment was entered Apr 19, 1983. The Hawaii Courts had unconstitutionally applied their procedural rule 73 which had the "force and affect of law" under Haw. Const. Art V-Sec 6 (A.O) to deprive the Appellants of their Federal and State Consti-

tutional rights to equal protection of the law (A.P). See State's rights of citizens and limitation on special privileges (A.R). Appellants had a right to fair trial under due process of law. CHAMBERS v MISSISSIPPI. State cannot deprive a litigant of a federal right by omitting or evading basic questions of fact which the lower courts did do. The judgment was also against the validity of 42 USC Sec 1983 (A.Q) which the Appellant had drawn in question. The Courts' ultimate de-facto granting of "lawful immunity" to the lawyer Defendant in this case, extends too far into the Appellants' rights, under color of law to be ignored. This Honorable Supreme Court has already ruled on the application of 42 USC Sec 1983 to the judicial branch. MITCHUM v FOSTER.

REASONS REQUIRING PLENARY CONSIDERATION

The final judgments being appealed justifiably add fuel to the wide spread belief that the judicial system exists to benefit

the favored lawyers and their relatively few preferred clients. For the Court to speak an Opinion that the lawyer can be held liable for his intentional tort against third or adverse persons and then ultimately decline to live up to their Opinion leaves no reason for confidence in the judicial system which is so dominated and controlled by favored lawyers.

The lower courts ultimately unconstitutionally applied their procedural rules to evade or invalidate the Federal Constitution and the State Constitution that grants the Appellants right to jury trial and to equal protection of the laws. The lower courts' final judgments and Opinion granted de-facto "lawful privilege" upon the lawyer in a manner that conflicts with 42 USC Sec 1983. These deprived rights were pivotal to the outcome of this case.

The outcome of this appeal will have a profound, wide spread affect upon defining the extent to which "lawful privilege", if it

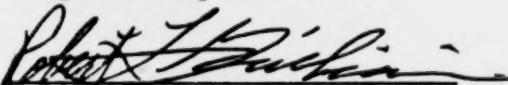
exists, protects the lawyer from direct liability when he unnecessarily injures third or adverse persons without regard to their legal rights. The extent of the lawyers' "lawful privilege" to injure other persons in favor of his client without direct liability is still not settled. This case has all the merits to permanently settle that issue now. This present case is not an isolated one. This appeal carries the issue of the individuals' rights in the Federal Const. and statute and applies on a national scale. A correct decision is of paramount importance.

As an aside, the Appellant submitted complaints on the Defendant lawyer and his defense counsel to the Hawaii Supreme Court's disciplinary counsel. After approximately one year of secret deliberation on each complaint, that counsel merely notified the Appellant, in each instance, that the complaint was dismissed. No substantial reason

was given, leaving this Appellant, for one,
seriously wondering about that counsel's
integrity.

DATED: June 8, 1983.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert L. Giuliani", written over a horizontal line.

ROBERT L. GIULIANI
Attorney pro se

P.O. Box 30862
Honolulu, Hawaii 96820
Tel: 808 833 4335

APPENDIX
(Appendix J omitted)

NO. 8390
IN THE INTERMEDIATE COURT OF APPEALS
OF THE
STATE OF HAWAII

ROBERT L. GIULIANI and	)	CIVIL NO. 46750
INGE E. GIULIANI,)	
	)	APPEAL FROM THE
Plaintiffs-Appellants	)	ORDER GRANTING
	)	MOTION FOR SUMMARY
vs.	)	JUDGMENT, FILED
	)	APRIL 24, 1981;
WALTER G. CHUCK,	)	ORDER DENYING MOTION
	)	TO AMEND COMPLAINT,
Defendant-Appellee.	)	FILED JULY 15, 1981
	)	AND THE ORDER DE-
	)	NYING MOTION FOR
	)	REHEARING AND RECON-
	)	SIDERATION OF DECI-
	)	SION, FILED JULY
	)	15, 1981
)	
	)	FIRST CIRCUIT COURT
	)	HONORABLE TOSHIMI
	)	SODETANI
	)	Judge

MEMORANDUM OPINION

This action was previously before this court on Plaintiffs' appeal from summary judgment below in favor of defendant. The judgment was reversed and the case remanded for further proceedings limited to the question of defendant's alleged intentional tort. GIULIANI v CHUCK, 1 Haw App 379,620 P.2d 733 (1980). The case is before us again on Plaintiffs' appeal from a second summary judgment. We hold this court is without appellate jurisdiction in this matter.

The judgment and notice of judgment on appeal were filed below on January 2, 1981. On March 11, 1981, defendant filed a Motion for Summary Judgment. On April 24, 1981, after hearing, the following order was entered:

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Defendant Walter G. Chuck having filed a motion for summary judgment and this motion having come on for hearing on March 31, 1981 and the Court having reviewed the memoranda of counsel and the Court having heard the argument of counsel and the Court being otherwise fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that summary judgment be granted in favor of Walter G. Chuck and against Robert L. Giuliani and Inge E. Giuliani.

DATED: Honolulu, Hawaii, April 23, 1981.

/s/ Toshimi Sodehani
Judge of the Above Entitled Court

On May 11, 1981, Plaintiff filed a Motion for Rehearing and Reconsideration of Decision, "pursuant to Rule 60, H.R.C.P. (Hawaii Rules of Civil Procedure) and the record on file herein." This motion was denied by order entered on July 15, 1981, after hearing. On July 28, 1981, plaintiff filed his Notice of Appeal.

Appellee challenges appellate jurisdiction for the reason that appellant's motion for reconsideration under "Rule 60, H.R.C.P." did not terminate the time for filing a notice

of appeal under Rule 73(a), HRCP and, therefore, appellant's notice, filed later than thirty days after judgment, was not timely. Rule 73(a), HRCP (1980, as amended). Appellant argues he "misinterpreted" Rule 73(a) and should not be penalized for that, since his notice of appeal was filed within thirty days of the denial of his motion for reconsideration. Appellant also argues that strict application of Rule 73(a) would be prejudicial to his "substantive rights," citing Hawaii Revised Statutes (HRS) 602-11 (1981 Supp)^{1/}

In madden v Madden, 43 Haw. 148 (1959) our supreme court held that it is the substance of a pleading and not its nomenclature

1/ Section 602-11, HRS, provides:

602-11 Rules. The supreme court shall have power to promulgate rules in all civil and criminal cases for all courts relating to process, practices, procedure and appeals, which shall have the force and affect of law. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant, nor the jurisdiction of any of the courts, nor affect any statute of limitations.

Whenever in a statute it is provided that the statute is applicable "except as otherwise provided," or words to that effect, these words shall be deemed to refer to provisions of the rules of court as well as other statutory provisions.

that determines its nature. Although Appellant here denominated his motion as being under Rule 60, HRCP, it could be argued that it is really a motion to alter or amend judgment under Rule 59(e). However, this interpretation, even if arguably correct, does not resolve the appellant's problem. Appellant's motion for reconsideration was also not timely filed. The order of April 24, 1981, determined with finality the claims of the parties and contained the magic words granting judgment. See M.F. Williams, Inc v. C&C of Honolulu, 3 Haw.App. 319,650 P.2d 599 (1982). The thirty-day period for filing a notice of appeal began to run on that date. Rule 73(a) provides that the thirty-day period is terminated by the timely filing of a motion under Rule 59(e). However, a motion under Rule 59(e) is required to be served not later than ten days after entry of the judgment. Rule 59(e), HRCP (L972, as amended). The record indicates that the motion in the instant case was served on May 11, 1981, seventeen days after judgment. Therefore the appeal period was not terminated and Plaintiff's notice of appeal came far too late. Cf. Naki v. Hawaiian Electric Co., Ltd., 50 Haw. 85,431 P.2d 943 (1967).

Failure to file a timely notice is a

fundamental jurisdictional defect which can neither be waived by the parties nor disregarded by the court in the exercise of judicial discretion. Independence Mtge. Trust v. Glenn Construction Corp., 57 Haw 554, 560 P.2d 488 (1977); Naki v. Hawaiian Electric Co., Ltd., supra; Ho v. Yee, 42 Haw.228 (1957); Price v. Christman, 2 Haw.App.212, 629 P.2d 633(1981).

The provisions of Rule 73(a) are almost crystalline. The appeal period is absolute unless extended by actions taken by the appellant pursuant to those provisions. Plaintiff is no stranger to the appellate process. In addition to the prior appeal in this matter, he was the successful pro se appellee in a related case decided by our supreme court in a memorandum decision.

A party may appear before any court in this state to prosecute or defend his own cause, without the aid of legal counsel, HRS 605-2 (1976), notwithstanding his lack of familiarity with the rules of the law and the practice of the courts. Oahu Plumbing and Sheet Metal, Ltd. v. Kona Construction Inc., 60 Haw.372, 590 P.2d 570(1979). However, once he has chosen to represent himself, he must be held to the same standard as if he were represented by counsel. Johnson v. Aetna Casualty and Surety Co. of Hartford Connecti-

cut, Wyo., 630 P.2d 514, reh'g denied, 454 U.S. 1118, 102 S.Ct.961, 71 L.Ed.2d 105 (1981); Bly v. Henry, 28 Wash.App.469, 624 P. 2d 717 (1981); Homecraft Corp. v. Fimbres, 119 Ariz.299, 580 P.2d 760 (Ariz App 1978); Bloch v. Bentfield, 1 Ariz App 412, 403 P. 2d 559 (1965). If he assumes the duties and responsibilities of an attorney, he is then held to the same standards of ethics and knowledge of legal principles and procedures of an attorney, Batten v. Abrams, 28 Wash. App 737, 626 P.2d 984 (1981), and he must be prepared to accept the consequences of his mistakes and errors. Heikes v. Fort Collins Production Credit Association, 169 Colo. 27, 456 P.2d 274 (1969). Although a party may not be placed at a disadvantage by his pro se appearance, other than those attributed to his decision to proceed without counsel, he may not gain an advantage by virtue of his own representation. Johnson v. Aetna Casualty and Surety Co. of Hartford Connecticut, supra; Richardson v. White, 497 P.2d 348 (Colo- App. 1972); Bloch v. Bentfield, supra.

Section 602-11, HRS, does not assist plaintiff, because he has no right to appeal except where granted by constitution or statute. State v. Shintaku, 64 Haw.307, 640 P.2d 289 (1982); Chambers v. Leavey 60 Haw.52, 587 P.2d 807 (1978).

Dismissed for lack of appellate
jurisdiction.

DATED: Honolulu, Hawaii, December 15,
1982

Robert L. Giuliani
plaintiff-appellant
pro se

Roy F. Hughes (James F.
Ventura with him on the
brief; Libkuman, Ventura,
Moon and Ayabe of counsel)
for defendant-appellee.

/s/ James S. Burns

/s/ Walter M. Heen

/s/ Harry T. Tanaka

Of Counsel:
LIBKUMAN, VENTURA, MOON,
& AYABE

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Tel No. 537-6119

Attorney for Defendant

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ROBERT L. GIULIANI, et al,	)	CIVIL NO. 46750
)	
Plaintiffs,	)	ORDER GRANTING
	)	MOTION FOR SUM-
vs.	)	MARY JUDGMENT
)	
WALTER G. CHUCK,	)	Hearing Date:
	)	March 31, 1981
Defendant.	)	Honorable T.
	)	Sodetani

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Defendant Walter G. Chuck having
filed a motion for summary judgment and this
motion having come on for hearing on March 31,
1981 and the Court having reviewed the memo-
randa of counsel and the Court having heard
the argument of counsel and the Court being
otherwise fully advised in the premises,

IT IS HEREBY, ORDERED, ADJUDGED AND
DECREED, that summary judgment be granted in

favor of Walter G. Chuck and against Robert
L. Giuliani and Inge E. Giuliani.

DATED: Honolulu, Hawaii, Apr 23, 1981

T. SODETANI
Judge of the Above Entitled Court

Filed Apr 24, 1981

Of Counsel
CHUCK & PAI

HUDDY T. LUCAS 1197-0
Suite 200, 1022 Bethel St.
Honolulu, Hawaii 96813
Tel No. 533-3614

Attorney for Defendant

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ROBERT L. GIULIANI and)	CIV. NO. 46750
INGE E. GIULIANI,)	
PLAINTIFFS,)	ORDER GRANTING
VS.)	MOTION FOR SUM-
WALTER G. CHUCK,)	MARY JUDGMENT AND
Defendants.)	JUDGMENT

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT AND JUDGMENT

This cause having come on to be heard
on November 24, 1976, on Defendant's Motion
for Summary Judgment, and the Court having
heard argument, and having examined the briefs
submitted, it appears to the Court, and the
Court so finds, that there is no genuine issue
as to any material fact, and that Defendant is
entitled to judgment as a matter of law.

WHEREFORE, IT IS ORDERED, ADJUDGED,

AND DECREED that Defendant's Motion for Summary Judgment is granted and that this cause is dismissed with prejudice at Plaintiff cost.

DATED: Honolulu, Hawaii Jan 5, 1976

/s/ Norito Kawakami
JUDGE OF THE ABOVE ENTITLED COURT

APPROVED AS TO FORM:

unsigned
ROBERT L. GIULIANI
Plaintiff in Person

Filed: Jan 5, 1977

NO. 8390

IN THE INTERMEDIATE COURT OF APPEALS
OF THE
STATE OF HAWAII

ROBERT L. GIULIANI and	)	CIVIL NO. 46750
INGE E. GIULIANI,)	
)	
Plaintiffs-Appellants)	
)	
vs.)	
)	
WALTER G. CHUCK,)	
)	
Defendant-Appellee.)	

ORDER DENYING MOTION FOR RECONSIDERATION

This court has considered plaintiff's Motion for Reconsideration filed on December 23, 1982, and the arguments in support thereof. Plaintiff's motion is denied.

DATED: Honolulu, Hawaii, December 27, 1982.

Robert L. Giuliani,
plaintiff-appellant,
on the motion, pro se.

/s/ James S. Burns
/s/ Walter M. Heen
/s/ Harry T. Tanaka

Filed: Dec 27, 1982

Of Counsel:

LIBKUMAN, VENTURA, MOON
& AYABE

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Attorney for Defendant

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ROBERT L. GIULIANI, et al.,	)	CIVIL NO. 46750
)	
Plaintiffs,	)	ORDER DENYING
	)	MOTION FOR RE-
vs.	)	HEARING AND RE-
	)	CONSIDERATION
WALTER G. CHUCK,	)	OF DECISION
)	
Defendant.	)	(June 1, 1981 -
	)	Judge T. Sode-
	)	tani)

ORDER DENYING MOTION FOR RE-HEARING AND
RECONSIDERATION OF DECISION

The motion for rehearing and reconsideration of decision filed herein by Plaintiffs having come on for hearing before this Honorable Court on June 1, 1981 and the Court having heard the arguments of counsel and the Court having afforded plaintiff Robert L. Giuliani extra time to file memoranda in connection therewith and the court

having reviewed the matter and all memoranda,

IT IS HEREBY ORDERED, ADJUDGED AND
DECREED, that the motion for re-hearing and
reconsideration of decision be and hereby is
denied.

DATED; Honolulu, Hawaii, July 15, 1981

/s/ T. SODETANI
Judge of the Above-Entitled Court

Filed: July 15, 1981

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Telephone: 2352149

Attorney in Person

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ROBERT L. GIULIANI and	)	CIVIL CASE NO. 46750
INGE E. GIULIANI,)	
Plaintiffs,	)	ORDER GRANTING PLAINTIFFS'
	)	MOTION FOR
vs.	)	JURY TRIAL
)	
WALTER G. CHUCK,)	
)	
Defendant.)	
)	

ORDER GRANTING PLAINTIFF' MOTION
FOR DEMAND FOR JURY TRIAL

These matters having come on for hearing before the Honorable Toshimi Sodehara on February 10, 1981 on Plaintiff's Motion For Demand For Jury Trial and the Plaintiffs being represented pro se by Plaintiff Robert L. Giuliani, and the Defendant being represented by Ronald T. Fujiwara, and the Court having heard of the Plaintiff pro se and of counsel for the Defendant and being fully advised in premissis and good cause appearing, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That Plaintiff's Motion For
Demand For Jury Trial is hereby granted.

DATED: Honolulu, Hawaii Feb 25, 1981

/s/ T. SODETANI

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/ RONALD T. FUJIWARA
Attorney for Defendant

Filed: Feb 25, 1981

NO. 8390

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ROBERT L. GIULIANI and	)	CIVIL NO. 46750
INGE E. GIULIANI,)	
	)	APPEAL FROM THE
Plaintiffs-Appellants	)	ORDER GRANTING
	)	MOTION FOR SUMMARY
vs.	)	JUDGMENT, FILED
	)	APRIL 24, 1981;
WALTER G. CHUCK,	)	ORDER DENYING MOTION
	)	TO AMEND COMPLAINT,
Defendant-Appellee	)	FILED JULY 15, 1981
	)	AND THE ORDER DENY-
	)	ING MOTION FOR RE-
	)	CONSIDERATION OF
	)	DECISION, FILED
	)	JULY 15, 1981
)	
	)	FIRST CIRCUIT COURT
)	
	)	HONORABLE TOSHIMI
	)	SODETANI,
	)	JUDGE

JUDGMENT ON APPEAL

Pursuant to the memorandum opinion of the Intermediate Court of Appeals of the State of Hawaii filed on December 15, 1982, the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawaii, Apr 19, 1981

APPROVED:
WALTER M. HEEN, JUDGE

Filed Apr 19, 1981 8:26 AM

APPENDIX G

ROBERT L. GIULIANI
P.O. BOX 30862
Honolulu, Hawaii 96820

Attorney in Person

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ROBERT L. GIULIANI and)	
INGE E. GIULIANI,)	CIVIL NO. 46750
)	
Plaintiffs,)	NOTICE OF APPEAL
)	
vs.)	
)	
WALTER G. CHUCK,)	
)	
Defendant.)	

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs, ROBERT L. GIULIANI and INGE E. GIULIANI, hereby appeal to the Supreme Court from the Order Denying Motion for Rehearing and Reconsideration of Decision, entered on 15 July 1981; Order Granting Motion for Summary Judgment entered on 24 July 1981.

DATED: Honolulu, Hawaii, 28 July 1981

/s/ ROBERT L. GIULIANI
Attorney in Person

Filed: July 28, 1981 .

NO. 8390

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1982

ROBERT L. GIULIANI and	)	CIVIL NO. 46750
INGE E. GIULIANI,)	
	)	APPLICATION FOR WRIT
Petitioners-Appellants	)	OF CERTIORARI
)	
vs.	)	INTERMEDIATE COURT
	)	OF APPEALS
WALTER G. CHUCK,)	
	)	HONORABLE JAMES S.
Respondent-Appellee	)	BURNS, WALTER M.
	)	HEEN and HARRY T.
	)	TANAKA,
	)	JUDGES

ORDER

The Application for Writ of Certiorari is hereby denied.

DATED: Honolulu, Hawaii, January 14, 1983.

FOR THE COURT:

/s/ H. Lum
Acting Chief Justice

Robert L. Giuliani
Per Se
for the writ

Filed: Jan 14, 1983

**HAWAII RULES OF CIVIL PROCEDURE (HRCP) Rule 16
PRE-TRIAL PROCEDURE; FORMULATING ISSUES.**

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

- (1). The simplification of the issues;
- (2). The necessity or desirability of amendments to the pleadings;
- (3). The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4). The limitation of the number of expert witnesses;
- (5). The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (6). Such matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the proceedings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for considerations as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

UNITED STATES CONSTITUTION, AMEND VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

HAWAII CONSTITUTION Art I-Sec 10

In suits at common law where the value in controversy shall exceed one hundred dollars, the right of trial by jury shall be preserved. The legislature may provide for a verdict by not less than three-fourths of the members of the jury.

HAWAII REVISED STATUTES Sec 635-13

Jury, when of right. When the right of trial by jury is given by the Constitution or a statute of the United States or this State and the right has not been waived, the case shall be tried by a jury.

HAWAII REVISED STATUTES Sec 635-15

Functions of court and jury. In jury trials all questions of law shall be decided by the court and questions of fact by the jury. The court may, however, charge the jury whether there is or is not evidence, indicating the evidence, if any, tending to establish or rebut any specific fact involved in the case.

HAWAII RULES OF CIVIL PROCEDURE (HRCP)
(pertinent parts shown for brevity)

Rule 73. APPEAL TO SUPREME COURT AND INTERMEDIATE COURT OF APPEALS.

(a) **How and When Taken.** An appeal permitted by law from a circuit court to the supreme court and the intermediate court of appeals shall be taken by filing a notice of appeal with the circuit court within 30 days from the entry of the judgment appealed from, except that: (1) upon a showing of excusable neglect the circuit court in any action may extend the time for filing the notice of appeal not exceeding 30 days from the expiration of the original time herein prescribed; (2) if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed, whichever last expires. The running of the time for appeal is terminated as to all parties by a timely motion made by any party pursuant to any of the rules hereinafter enumerated, and the full time for appeal fixed in this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: granting or denying a motion for judgment under Rule 50(b); or granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; or granting or denying a motion under Rule 59 to alter or amend the judgment; or denying a motion for a new trial under Rule 59. If the order or judgment appealed from is appealable only upon the allowance of the appeal by the court entering it, any application for such allowance must be made within 10 days after entry thereof and the appeal taken within 10 days after the allowance is granted.

Failure of the appellant to take any other step than the timely filing of a notice of

appeal does not affect the validity of the appeal, but is ground only for such action as the supreme court or the intermediate court of appeals deems appropriate, which may include dismissal of the appeal. If an appeal has not been docketed, the parties, with the approval of the circuit court, may dismiss the appeal by stipulation, filed in that court, or that court may dismiss the appeal upon the motion and notice by the appellant.

(b) Notice of Appeal. The notice of appeal shall specify the parties taking the appeal and shall designate the judgment or part thereof appealed from. Notification of the filing of appeal shall be given by the appellant by serving the same in the manner provided in Rule 5.

(g) Docketing the appeal; Filing the Record on Appeal. The appellant shall cause the record on appeal as provided for in Rules 75 and 76 to be filed with the supreme court and the appeal to be docketed there within 40 days from the date of filing the notice of appeal. The record will be filed and the appeal docketed upon receipt by the clerk of the supreme court, within 40 days herein provided or within such shorter or longer period as the court may prescribe, of the record on appeal and, unless the appellant is authorized to proceed without prepayment of fees, of the filing fee fixed by law. When more than one appeal is taken from the same judgment, the circuit court may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date of filing the first notice of appeal. In all cases the circuit court may extend the time for filing the record and docketing the appeal upon motion of an appellant made within the period for filing and docketing as originally prescribed or as extended by a previous order, or upon its own motion by order entered within such period; but the circuit court shall extend the time to a day more than 90 days from the date of

filing the first notice of appeal. The motion of an appellant for an extension shall show that his inability to effect timely filing and docketing is due to causes beyond his control or to circumstances which may be deemed excusable neglect. The circuit court or the supreme court may require the record to be filed and the appeal to be docketed at any time otherwise provided or fixed.

**HAWAII RULES OF CIVIL PROCEDURE (HRCP) Rule 61
HARMLESS ERROR.**

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

HAWAII CONSTITUTION Art V-Sec 6. RULES.

The supreme court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals which shall have the force and affect of law.

UNITED STATES CONSTITUTION, Amend XIV, Sec 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**HAWAII STATE CONSTITUTION, Art I-Sec 4.
DUE PROCESS AND EQUAL PROTECTION**

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against because of race, religion, sex or ancestry.

**42 USC Sec 1983. CIVIL ACTION FOR DEPRIVATION
OF RIGHTS.**

Every person, who under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

HAWAII CONSTITUTION Art I-Sec 6. RIGHTS OF CITIZENS.

No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land.

HAWAII CONSTITUTION Art I-Sec 19. LIMITATIONS ON SPECIAL PRIVILEGES.

The power of the State to act in the general welfare shall never be impaired by the making of any irrevocable grant of special privileges or immunities.

IN THE SUPREME COURT OF THE
UNITED STATES

October Term 1982

ROBERT L. GIULIANI,

Appellant,

v.

WALTER G. CHUCK,

Appellee.

Appellant for Appeal - Civil Case

On Appeal from the Intermediate
Court of Appeals of Hawaii

AFFIDAVIT OF SERVICE OF
ROBERT L. GIULIANI

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

ROBERT L. GIULIANI, being first duly
sworn, on oath, deposes and says:

That He did personally serve three
copies of the forgoing Appeal on June 15,
1983 to the following counsel of record
for the above named Defendant at the follow-
ing address by hand delivering the same

to an employee therein:

ROY F. HUGHES 1774
737 Bishop Street
Suite 3000
Honolulu, Hawaii 96813

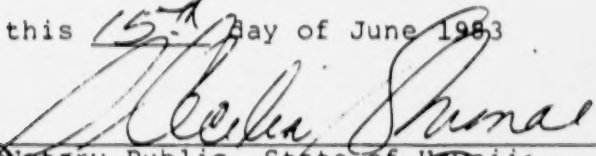
FURTHER, Affiant sayeth naught.

DATED: Honolulu, Hawaii 15 June 1983.


ROBERT L. GIULIANI

Subscribed and sworn to before me

this 15th Day of June 1983


Notary Public, State of Hawaii

My commission expires: July 1, 1984

